

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

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Addl. Drafters:

Subject: **Tax, Business - crp inc, fran**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0287 -

Topic:

Direct and indirect air carriers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	jkreye 12/20/2008	bkraft 12/22/2008	mduchek 12/23/2008		cduerst 12/23/2008		

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1217

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Direct-Indirect Air Carrier
- Tracking Code: BB0287
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

Intent:

Amend statutes to clearly define "air carrier company" as direct air carrier company" as defined in Federal Aviation Administration regulations.

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: November, 2008

TITLE: Direct-Indirect Air Carrier

DESCRIPTION OF CURRENT LAW AND PROBLEM

Wisconsin statutes provide a special income apportionment for tax income and franchise purposes "air carrier company" but the law has no definition of "air carrier." Since the enactment of the law (2003 Act 27), the Federal Aviation Administration has amended its rules to define two categories of air carrier companies – indirect and direct.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

An *indirect cargo air carrier* is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, or order, or permit issued by the [federal] Department of Transportation or the Civil Aeronautics Board, or the services of its agent, or of another indirect cargo air carrier.

Minnesota law also has a special apportionment for air carriers and defines "air carrier". "Air carrier" means a person engaged in the paid carriage of passengers, cargo, or mail on regularly scheduled flights of aircraft. 8017.6000. Subpart 2.A.

RECOMMENDATION FOR ACTION

Amend statutes to clearly define "air carrier company" as "direct air carrier company" as defined in Federal Aviation Administration regulations. This change will ensure that Wisconsin law reflects the legislative intent: special apportionment for direct air carriers only and not for indirect cargo air carriers. The change would mirror current Department of Revenue administration of the law.

See drafting instructions for statutory changes needed. This change will also require clarification in Administrative Rules Tax 2.46 and 2.50.

ADMINISTRATIVE IMPACT

Minimal

FAIRNESS /TAX EQUITY

Provides special apportionment for only those companies that provide air transportation and that control the operational function performed in providing that transportation.

Indirect cargo air carriers (for example, UPS) would not be eligible for the special air carrier apportionment formula.

IMPACT ON ECONOMIC DEVELOPMENT

None

FISCAL EFFECT

Indirect cargo air carriers have challenged the Department of Revenue's current administration of the law. They would like to be considered air carriers because the special apportionment calculation for air carriers can result in a lower tax liability than the standard apportionment formula. The fiscal effect of the proposed change is estimated to be an annual increase in GPR revenue of \$4.0 million.

DRAFTING INSTRUCTIONS

Amend secs. 71.04(8)(c), and 71.25(10)(c), Wis. Stats.

The net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue . . . "Air carrier" means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication date.

INTERESTED/AFFECTED PARTIES

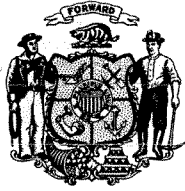
Air carriers.

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY

Lili Crane



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1217/P1

JK:.....

Lbjk

DOA:.....Lillethun, BB0287 - Direct and indirect air carriers

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

> Under current law, the net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities are apportioned to this state according to DOR rules. Under this bill, an air carrier is a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

defined as

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 71.01 (1ap) of the statutes is created to read:

3 71.01 (1ap) "Air carrier" means a person who provides or offers to provide air
4 transportation and who has control over the operational functions performed in
5 providing that transportation.

SECTION 2

SECTION 2. 71.22 (1bd) of the statutes is created to read:

71.22 (**1bd**) “Air carrier” means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1217/P1

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